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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4621 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra .. Applicant
(Orig.Complainant)

V/s.

Abhay Hirachand Kothari .. Respondent
(Orig.Accused)

Mr. Y. S. Shinde A.P.P. for the Applicant - State.
Mr. Prakash Hasare i/b. Mr. Kuldeep S. Patil for respondent.

CORAM : SMT.V.K.TAHILRAMANI, J.
DATE : 4th October, 2007.

P.C. :-

. Heard learned A.P.P. for the applicant - State of Maharashtra. Perused the record of the case produced by the A.P.P. The applicant has filed this application for leave to file an appeal against the Judgment and Order of acquittal dated 12th September, 2006 passed by the 4th Ad-hoc Additional Sessions Judge, Sangli in Special case No. 150 of 2005. By the said Judgment and order the learned 4th Ad-hoc Additional Sessions Judge, Sangli acquitted the respondent under section 376(2)(d) of the Indian Penal Code

2. The prosecution story in brief is as under :

. The prosecutrix joined service in the hospital of respondent in the month of October, 1999. The prosecutrix worked in the hospital of the respondent for about 5 years as nurse. It is her case that while she was working in the hospital of the respondent, the respondent committed rape on her. It is the case of the prosecutrix that the respondent committed rape on her for about 4 years. Thereafter, the service of the prosecutrix came to be terminated from 1st January, 2005. The prosecutrix searched for job in many hospitals, however, she did not get any job. Thereafter, on 3rd March, 2005 she lodged a complaint against the respondent.

3. It is the case of the prosecutrix that the respondent had committed rape on her for about four years. However, though the prosecutrix had three brothers and two sisters and mother, the prosecutrix did not disclose about the fact of rape to them for four years. Two of the brothers and both the sisters of the prosecutrix were elder than her. The evidence of the prosecutrix discloses that she had a very close friend by name Archana Yadav, however, the prosecutrix had not even told Archana Yadav about the incident of rape. At no point of time the prosecutrix has complained to them about the repeated incidents of rape nor did she make any the complaint to any other person. From the evidence on record, it is seen that it is a case of sexual intercourse by consent. It is only

after the service of the prosecutrix came to be terminated by respondent that some months thereafter she has lodged her complaint. There is inordinate delay in lodging the FIR. The delay in lodging the FIR is almost of five years. The delay has not been explained. Therefore, the long period of five years of non disclosure by the prosecutrix of alleged act on the part of the accused creates a doubt as regards the prosecution case.

4. Moreover Exh.36 which is admitted by the prosecutrix during her evidence shows that only due to anger she lodged the complaint against the accused and the accused has not committed the alleged act of rape mentioned in the complaint. The affidavit Exh.26 also states the very same facts. Looking to all the facts, in my opinion, the learned Sessions Judge has rightly acquitted the respondent of the offence charged.

5. In view of the above, I am of the opinion that the view taken by the learned 4th Ad-hoc Additional Sessions Special Judge, Sangli is a reasonable and possible view. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstances that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of

authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C. Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C. Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Special Judge is a reasonable and possible view, hence, no interference is called for.

6. In this view of the matter, application for leave to appeal is rejected and consequently appeal stands dismissed.

(SMT.V.K.TAHILRAMANI, J.)